



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 04 027 53090

Office: VERMONT SERVICE CENTER

Date: SEP 16 2005

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate at Johns Hopkins University (JHU). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner is performing "critical research in the field of biomedical science particularly as it relates to mass spectrometry and proteomics." Counsel's subsequent description of the petitioner's work appears to have been lifted verbatim from various witness letters, which shall be discussed below.

The petitioner submits several letters, all from witnesses who have supervised, taught, studied, or collaborated with the petitioner. Professor Joe G.N. Garcia, director of the Division of Pulmonary and Critical Care Medicine and the Center for Translational Respiratory Medicine at JHU, states:

In early 2003, our Division of Pulmonary and Critical Care Medicine successfully competed for a new research project . . . [that] requires us to recruit an experienced mass spectrometer specialist who has the capabilities to seek novel protein biomarkers using proteomic analyses of biological fluids from human, canine and murine models of ventilator-associated lung injury (VALI). Mechanical ventilation is indispensable in patients with respiratory failure . . . [but] can cause damage known as VALI. . . . [T]he underlying mechanisms need to be explored and mechanical ventilation needs to be modified so that VALI is kept to a minimum to improve survival of patients with ARDS [acute respiratory distress syndrome]. . . . Among a great number of candidates, [the petitioner] impressed us by her strong interdisciplinary educational training, profound knowledge and superior skills in mass spectrometry and biology, especially her experience in the field of proteomics. . . .

Currently [the petitioner] is working on identification of the binding partners of endothelial cell myosin light chain kinase (ECMLCK), an essential part of another project funded by NHLBI [the National Heart, Lung and Blood Institute]. . . . ECMLCK is a biomarker for acute lung injury. However, the underlying mechanism . . . remains unknown. [The petitioner's] continuous research will ultimately be used to design effective strategy for preventing acute lung injury. . . .

[The petitioner] is an essential part of our group, further progress is unlikely without her future participation because of the extreme difficulty to find another to replace her critical role in her current and future projects. If [the petitioner] has to be replaced with another U.S.

worker of only minimum qualifications, our progress will be substantially delayed and the quality of our work will be greatly diminished because another cannot equal her performance.

The petitioner earned her doctorate at the University of Virginia under the direction of Professor Donald F. Hunt, whom Prof. Garcia calls the “most famous mass spectrometer specialist.” Prof. Hunt, in turn, deems Prof. Garcia to be “probably one of the premier investigators in this research field.” Of the petitioner, Prof. Hunt states:

[The petitioner] is highly gifted and quickly gained mastery of many important bioanalytical technologies. These include the combination of the nanoflow HPLC and micro-electrospray ionization interfaced to ion trap, triple quadrupole, and Fourier transform mass spectrometers. She has now become an expert in the field of protein characterization and is one of a hand full of people who can (a) identify proteins present in complex mixtures at femtomole/attomole level (b) characterize sites of phosphorylation and other post-translational modifications on proteins, (c) conduct comparative proteomic experiments to identify proteins differentially expressed in healthy and diseased cells or in cells treated with and without a therapeutic agent or agonist, and (d) elucidate protein-protein interactions in the cell.

Prof. Hunt asserts that the petitioner is “among the top 5% of U.S. scientists working in the fields of proteomics and mass spectrometry,” and “is on track to become one of the leading scientists in the proteomics field.” Other professors and collaborators offer comparable praise for the petitioner and the importance of her contributions.

The petitioner submits copies of her published articles, which, counsel claims, “ha[ve] been cited many times by other authors.” The petitioner submits a list of articles said to cite the petitioner’s work, but the source of the list is not identified. This unattributed list is, therefore, an unsubstantiated claim. This lack of substantiation is particularly critical when claims conflict with one another. The list submitted by the petitioner refers to 66 citations, but Prof. Garcia places the number substantially lower, stating that the petitioner’s “work has been cited by more than 24 publications by other authors.” The petitioner documents only one citation, by submitting a copy of the citing article.

The director denied the petition, noting that, without a substantial number of documented citations, “there is little evidence that other researchers have relied upon the [petitioner’s] findings.” The director also concluded that the waiver request is based upon the petitioner’s training and technical mastery of technology invented by others.

On appeal, the petitioner submits new witness letters. Prof. Garcia states that the petitioner “successfully built a functional proteomics lab in about six months after her appointment at Johns Hopkins University,” without which “a great deal of research projects would have been detrimentally delayed.” In this lab, claims Prof. Garcia, the petitioner “solved many difficult biological and biochemical problems [that] many researchers . . . have been trying to solve for years.” Corroborating this claim is Professor Philip Beachy, a member of the National Academy of Sciences, who states:

Although I do not interact directly with [the petitioner] on a daily basis, as she is in Johns Hopkins’ Division of Pulmonary and Critical Medicine, my lab has benefited greatly from the work of [the petitioner’s] mass spectrometry proteomics lab. . . .

My laboratory's research is focused on Hedgehog proteins as signals involved in embryonic tissue patterning and cell differentiation, an area of research pioneered in my laboratory. . . .

We have struggled for some time to come to grips with the problem of precisely characterizing low levels of phosphorylation in a complex protein mixture so that we can analyze the biological roles of those phosphorylation events. In this endeavor we turned for help to other proteomics labs, but despite much time and effort invested on our part, little progress was made. Because of her well-established reputation in mass spectrometry and proteomics, we contacted [the petitioner] in the summer of 2003 to initiate a collaboration on this project. By October, a few months later, [the petitioner] had produced magnificent results and identified a significant number of phosphorylation sites from a complex mixture of proteins, some of which are present at femtomole levels. This is very impressive. Based on her research results we were able to mutate these phosphorylation sites and were able to confirm and extend previous studies showing a positive effect for cAMP-dependent protein kinase and uncover a positive role for casein kinase 1a in Hedgehog pathway activation. These research findings have greatly advanced our understanding of the mechanisms of Hedgehog signaling, and the results were published in Proceedings of the National Academy of Science [sic], a pre-eminent journal. Within a few days of publication I received the following note from Dr. Robert Lefkowitz, a distinguished scientist and National Academy member at Duke University School of Medicine:

"I really enjoyed your 'Inaugural Article' and Bio in PNAS. What a beautiful and rigorous piece of work!"

Without [the petitioner's] mass spectrometry lab and her critical contribution, we could not have succeeded in this project and could not have published our research findings.

Prof. Beachy states that the petitioner "has become a much-sought resource" among other researchers. Corroborating this assertion is Professor John L. Woolford of Carnegie Mellon University, who had previously discussed his collaboration with the petitioner. Prof. Woolford states: "I initiated this collaboration with [the petitioner] because I had already become very impressed with her well-known expertise in mass spectrometry and proteomics." The record shows additional examples of the petitioner's collaborations with researchers at other institutions (and even in other countries), demonstrating that the petitioner's impact is not limited to the JHU campus.

The record, as a whole, indicates that the petitioner is not merely an individual who possesses hard-to-find skills. Rather, the record indicates that the petitioner's expertise is such that researchers from a broad variety of prestigious institutions actively seek her out as a collaborator because of her unparalleled abilities. While record does not adequately document the claim of heavy citation, the remaining evidence is persuasive in its own right, and lends weight to the general conclusion that the petitioner is responsible for successful research outcomes in heavily-cited publications. While the petitioner appears to play a supporting role rather than acting as the initiator of research projects, the facts in this particular case indicate that the petitioner serves the national interest through that supporting role by producing results that, according to top experts, could not have been produced otherwise. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.